STATE OF MICHIGAN

COURT OF APPEALS

THOMAS CIPOLLONE,

Plaintiff-Appellant,

and

BLUE CROSS & BLUE SHIELD OF MICHIGAN and BLUE CARE NETWORK OF MICHIGAN,

Intervening Plaintiffs,

v

HELEN HAYNES,

Defendant-Appellee.

UNPUBLISHED
June 19, 2007

No. 271634
Wayne Circuit Court
LC No. 03-330992-NO

Before: Zahra, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this dispute arising out of a premises liability claim. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedure

Plaintiff is the son of defendant. On September 21, 2000, plaintiff stopped by defendant's house before going to work to check on her because she was ill at the time and needed some assistance with chores. Plaintiff visited his mother almost daily to take care of her, such as by preparing her breakfast. Plaintiff claims he opened the door to the basement and started down the stairs when he noticed a piece of blue and white cloth or clothing on the first step. He wanted to avoid hitting the cloth but his momentum was already carrying him. He tried to reach out and grab something to stop himself, but there was nothing to grab. His foot eventually hit the cloth and that caused his fall. Plaintiff could only remember falling down the stairs; he did not remember any other events that happened that morning. Plaintiff did not remember eating or speaking to defendant before his fall. He also did not remember why he was going into the basement that morning, but stated he was possibly going to do something concerning defendant's laundry.

This case was previously before this Court after both parties agreed that plaintiff was an invitee, and the trial court determined that no duty was owed to plaintiff under the circumstances: he was familiar with the condition of the stairs in defendant's house, he knew there was a light switch but was not sure if he used it on the day in question, and he saw the cloth on which he slipped, but his momentum prevented him from stepping on it.

This Court reversed the trial court's decision, stating that the trial court applied the wrong standard, and while a plaintiff's subjective awareness plays a part in comparative negligence, it does not relieve defendant landowner of her duty.[1] Additionally, in a footnote this Court noted that while it expressed no opinion concerning the parties' agreement that plaintiff was a business invitee, a recent decision *McKim v Forward Lodging Inc*, 474 Mich 947; 706 NW2d 202 (2005) might be applicable.

Subsequently, defendant filed another motion for summary disposition, arguing that plaintiff was in fact a licensee and not an invitee. The trial court once again granted defendant's motion for summary disposition, finding that plaintiff was a licensee on defendant's premises. This appeal followed.

II. Analysis

A trial court's decision to grant a motion for summary disposition is reviewed de novo by this Court. *Progressive Timberlands, Inc v R & R Heavy Haulers, Inc*, 243 Mich App 404, 407; 622 NW2d 533 (2000). A motion for summary disposition under MCR 2.116(C)(10) allows summary disposition to be granted to the moving party if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). When reviewing such a motion "we must examine all relevant documentary evidence in the light most favorable to the nonmoving party and determine whether there exists a genuine issue of material fact on which reasonable minds could differ." *Progressive Timberlands, supra,* 407.

Michigan recognizes three common-law categories for people who enter the premises of another. *Stitt v Holland Abundant Life Fellowship,* 462 Mich 591, 596; 614 NW2d 88 (2000). Those categories are: (1) trespasser, (2) licensee, or (3) invitee. Landowners owe a different standard of care to those people based on the applicable category. *Id.*

A licensee is typically a social guest and assumes the ordinary risks associated with such a visit. *Id.* An invitee, however, enters the land by invitation and is entitled to the highest level of protection provided by premises liability law. *Id.* at 597. According to Cooley on Torts "[a]n invitation may be inferred when there is a common interest or mutual advantage, a license when the object is the mere pleasure or benefit of the person using it." *Id.* at 600. Our Supreme Court noted that

> Cooley's acknowledgment that an invitee's status is dependent upon a visit associated with a "commercial purpose" and "mutuality of interest" concerning the reason for the visit demonstrate the extent to which Michigan has historically,

[1] *Cipollone v Haynes*, unpublished opinion per curiam of the Court of Appeals, issued January 17, 2006, (Docket No. 264789).

> if not uniformly, recognized a commercial business purpose as a precondition for establishing invitee status. [*Id.*]

Similarly, in peremptorily reversing this Court in *McKim*, our Supreme Court implied that invitee status is conferred only when the landowner receives a business or commercial benefit from the plaintiff's presence on the property. *McKim*, *supra*, at 947. To determine whether a family member is a licensee or an invitee, this Court, in *Leveque v Leveque*, 41 Mich App 127, 131; 199 NW2d 675 (1972), adopted the approach of the Supreme Judicial Court of Massachusetts in *Pandiscio v Bowen*, 342 Mass 435, 437-438; 173 NE2d 634 (1961).

> [A] member of a family or household group or group of acquaintances rendering friendly help in household routine or commonplace tasks to another member of the group does not cease to be a licensee or social visitor unless the character or circumstances of the assistance make it clearly the dominant aspect of the relationship rather than a routine incident of social or group activities.

Thus, a court must examine both the relationship a plaintiff has with a defendant and whether the preponderant purpose of the plaintiff's visit was commercial or social to determine whether a plaintiff is, respectively, an invitee or a licensee.

In this case, nothing in the evidence suggests that plaintiff rendered assistance to his mother for any other reason but that she was his mother, i.e., a "routine incident" of their social activity. Further, far from being a dominant aspect of the "character or circumstances" of his visits to his mother, there is nothing to suggest that any aspect of plaintiff's assistance on the day of the mishap or on any other day was commercial. As such, under the test adopted by this Court in *Leveque*, and consistent with parameters of our Supreme Court in *McKim*, plaintiff here was a licensee. Defendant owed him nothing more than a duty to warn of hidden dangers "the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved." *Stitt*, *supra*, at 596. Plaintiff admits that he saw the cloth and knew he was going to go downstairs. A licensee cannot rely on a would-be defendant's duty to warn him against dangers that are not hidden. "The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit." *Id*. Therefore, plaintiff in this case cannot show that defendant owed him a duty to protect him from the alleged danger (the cloth or the condition of the stairs) that was not hidden; and defendant is entitled to summary disposition.

Affirmed.

/s/ Brian K. Zahra
/s/ Richard A. Bandstra
/s/ Donald S. Owens